

SUBCOMMITTEE NO. 3

Agenda

Health, Human Services, Labor & Veteran's Affairs

Chair, Senator Elaine K. Alquist
Senator Alex Padilla
Senator Mark Wyland



Agenda – Part B (Labor)

Monday, April 7, 2008
10:30 pm
Room 4203
(Consultant: Bryan Ehlers)

Vote-Only Agenda

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Items Proposed for Vote-Only:

0559 Labor & Workforce Development Agency

The Labor and Workforce Development Agency (LWDA) brings together the departments, boards, and commissions, which train, protect and provide benefits to employees. The LWDA is primarily responsible for three different types of functions, labor law enforcement, workforce development, and benefit payment and adjudication. The LWDA includes the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board (which is heard in Subcommittee #2) and the Workforce Investment Board and is funded through reimbursements from those departments. The Agency provides policy and enforcement coordination of California's labor and employment programs and policy and budget direction for the departments and boards.

The Governor's Budget begins by funding 18.0 positions (including 2.0 new positions) and budget expenditures of \$3.1 million for the LWDA, but then includes a 10-percent, across-the-board GF reduction (Budget-Balancing Reduction—BBR) of \$226,000 and 1.0 position. Taking into account the proposed BBR, the Governor's Budget would provide approximately \$550,000 more in FY 2008-09 compared to adjusted-FY 2007-08.

Vote-Only Item 1: LWDA BBR—Eliminate One Agency Position

As part of his 10-percent, across-the-board BBR, the Governor proposes to reduce the LWDA budget by \$226,000 General Fund (GF) and 1.0 position (Staff Services Analyst).

Staff Comment: When the LWDA was first created it assumed some responsibilities that formerly rested at the departments. According to the Administration, the elimination of one agency position would result in the transfer of some responsibilities back to the departments.

Vote-Only Item 2: LWDA BCP-1—Agency Information Officer and On-going Operational Costs

The LWDA requests 1.0 position (Agency Information Officer—AIO) and \$417,000 (reimbursement authority) for administrative support provided by the Employment Development Department (EDD).

Staff Comment: The functions of the LWDA are supported by reimbursements paid by its constituent departments. This request would provide \$167,000 for the AIO, \$242,000 for administrative support, and \$8,000 for one-time costs. Due to the relatively small size of the expenditure increase, the constituent departments are not requesting a corresponding increase and will absorb the additional costs. Staff notes that this proposal is consistent with the policies and plans of the State Chief Information Officer.

7100 Employment Development Department

Vote-Only Item 3: EDD BBR—Reduce Unemployment Insurance Appeals Board

The Governor proposes a 10-percent GF reduction of \$56,000 and 0.5 positions to the California Unemployment Insurance Appeals Board (CUIAB).

Staff Comment: The CUIAB holds hearings on petitions from taxpayers concerning assessments made by EDD's Tax Branch. Through this process, the CUIAB resolves liability for employment tax contributions, including but not limited to Personal Income Tax (PIT) withholdings (which result in GF revenue). Because these activities are supported by a mix of fund sources, the EDD indicates this reduction would affect the cost-sharing ratio and require special funds to pay a greater proportionate share of the program costs (albeit on a relatively small scale given the size of the reduction).

Vote-Only Item 4: EDD BBR—Reduce Administrative Support

The Governor proposes a 10-percent GF reduction of \$190,000 and 1.8 positions to administrative support activities for the EDD tax collection program.

Staff Comment: The EDD indicates this reduction would have no adverse effect on revenue collection; however, because the EDD collects federal and state taxes under a cost-sharing agreement, reducing the GF contribution would require other funds to bear a greater proportionate share of the costs of tax collection efforts and would put the PIT portion of the ratio further out of federal compliance. The EDD indicates that its processing of employer taxes has changed since the last approved tax-sharing ratio in 1992 and that the GF is already being supplemented by other funds, but staff notes that the additional impact of this reduction to the cost-sharing ratio would be de minimis.

Vote-Only Item 5: EDD BCP-5—Heroes at Home

The EDD requests \$5.9 million (special fund) to expend the FY 2008-09-portion of \$7.6 million in grant funds recently awarded to California by the United States Department of Labor for the Heroes at Home demonstration project. The funds would be used to continue the demonstration project to provide Career Advancement Accounts for active duty military spouses with post-secondary education to receive training to gain the skills needed to successfully enter, navigate, and advance in 21st century jobs.

Staff Comment: The EDD requested and received authority to expend \$1.7 million of the allotted grant funds in the current fiscal year.

7120 California Workforce Investment Board

The federal Workforce Investment Act (Act) of 1998 established new requirements for employment and training programs for adults, youth, and dislocated workers. Pursuant to the provisions of the Act, California established a state Workforce Investment Board (Board) comprised of: (1) the Governor; (2) two members of the Senate, appointed by the President pro Tempore; (3) two members of the Assembly, appointed by the Speaker; and (4) representatives of business, labor organizations, community-based organizations, schools and colleges, state agencies, and local governments, appointed by the Governor. The Board is tasked with developing workforce development programs into an integrated workforce investment system that can better respond to the employment, training, and education needs of its customers.

The Governor proposes \$4.4 million (federal funds and reimbursements) and 20.0 positions for the Board's budget—a decrease of approximately \$100,000 from adjusted current-year expenditures, and no change in positions.

Vote-Only Item 6: CWIB BCP-1—SB 293 Workload

The California Workforce Investment Board (CWIB) requests an increase of \$100,000 (federal funds) to perform specific and required workforce development activities per Chapter 630, Statutes of 2006 (SB 293, Ducheny).

Staff Comment: Due to a reduced federal Workforce Investment Act allotment for FY 2007-08, the EDD and CWIB have shared in funding reductions on a proportionate basis, including a \$400,000 reduction proposed for the CWIB in both FY 2007-08 and 2008-09. However, a budget augmentation is also proposed for the CWIB, \$700,000 in FY 2007-08 and \$500,000 in FY 2008-09, to implement SB 293. The LWDA has already directed the increase to FY 2007-08 appropriation levels citing authority provided by Provision 2 of Item 7100-001-0869, Budget Act of 2007. This request reflects the net, budget-year effect of the \$400,000 reduction and the \$500,000 augmentation.

SB 293's primary mandate for the CWIB is the development of a state strategic workforce development plan that will provide a framework for developing strategies for public policy, fiscal investment, operations for all state labor exchange, workforce education, and training programs.

7350 Department of Industrial Relations

Vote-Only Item 7: DIR BBR—Reduce Self-Insurance Plans Operating Expenses and Equipment

The Governor proposes a 10-percent GF reduction of \$4,000 to the Department of Industrial Relations (DIR) Self Insurance Plans (SIP) program.

Staff Comment: The DIR proposes a reduction in the General and Miscellaneous Operating Expense line item within this program and expects the reduction to have a minimal impact.

Vote-Only Item 8: DIR BBR—Reduce Division of Labor Statistics and Research

The Governor proposes a 10-percent GF reduction of 3.0 positions and \$294,000 to the DIR Division of Labor Statistics and Research (DLSR). The proposal includes moving the publication of apprenticeship prevailing wage determinations from the DLSR to the Division of Apprenticeship Standards.

Vote-Only Item 9: DIR BBR—Reduce Administrative Support

The Governor proposes a 10-percent GF reduction of 3.0 positions and \$553,000 to DIR Administrative Support, to be taken out of operating expenses in the budget and personnel offices as well as the Office of the Director.

Staff Comment: The DIR indicates the administrative workload would be redistributed amongst remaining staff. The operating expense reduction represents approximately 2.2 percent of all administrative operating expenses (which is also supported by special funds).

Vote-Only Item 10: DIR BCP-6—Network Security and Project Management

The DIR requests 3.0 positions and \$650,000 (various special funds) to: (1) provide project management and oversight for critical information systems projects; (2) comply with federal and state laws pertaining to protection of personal and confidential information; and (3) provide ongoing support to meet the growing information management and reporting needs of the department.

Vote-Only Item 11: DIR BCP-10—Limited-Term Conversion in Legal Unit

The DIR requests to convert 1.0 limited-term positions in the Legal Unit to permanent status at a cost of \$185,000 (Workers' Compensation Administration Revolving Fund—WCARF) to support ongoing regulatory activities related to workers' compensation reform.

Staff Comment: Chapter 34, Statutes of 2004 (SB 899) originally provided the DIR with 5.5 positions for a two-year limited-term, and 4.0 of those positions were extended for an additional two years in the Budget Act of 2006. With those positions set to expire, the

DIR requests that 1.0 Industrial Relations Counsel III (Specialist) be made permanent to address ongoing workers' compensation regulation workload.

Vote-Only Item 12: DIR BCP-14—Effective Injury and Illness Prevention Programs

The DIR requests a one-time augmentation of \$307,000 (WCARF) to assist any school or district that has high risk of occupational injury or illness and needs to establish and maintain effective occupational Injury and Illness Prevention Programs (IIPPs), as required by law.

Staff Comment: The funding for this proposal was collected as penalties from schools that do not have adequate IIPPs. This request would provide the expenditure authority for the DIR to make the funds available on a first-come-first-serve basis to high risk schools that do not currently meet the IIPP requirements contained in statute.

Vote-Only Item 13: DIR BCP-16—Workers' Compensation Insurance Coverage Program—SB 869

The DIR requests 1.0 position and \$143,000 (WCARF) to carry out the workers' compensation insurance coverage program with the appropriate amendments indicated by Chapter 662, Statutes of 2007 (SB 869).

Staff Comment: SB 869 amended existing law to: (1) require the workers' compensation insurance coverage program to systematically identify unlawfully uninsured employers; (2) authorize the Labor Commissioner to prioritize targets for the program in consideration of available resources; and (3) required the Labor Commissioner to publish the annual report concerning the effectiveness of the program on the Labor Commissioner's website. The costs of the bill's requirements are to be offset by penalties assessed as the program is implemented.

Vote-Only Item 14: DIR BCP-17—Implement Amusement Ride Safety Law Revisions—SB 783

The DIR requests 2.6 positions and \$311,000 (Elevator Safety Account) to implement the new provisions of Chapter 478, Statutes of 2007 (SB 783).

Staff Comment: Among other things, SB 783 expanded the types of accidents that owners and operators of non-permanent or portable amusement rides must report to the Division of Occupational Safety and Health (DOSH), and required the DOSH to enforce the statutory and regulatory provisions pertaining to portable amusement rides by issuance of citations and civil penalties. The DIR indicates 2.0 positions would work to implement the new provisions, while 0.6 positions would be under the Occupational Safety and Health Appeals Board to manage the estimated increase in the number of appeal cases.

STAFF RECOMMENDATION ON VOTE-ONLY ITEMS: APPROVE Vote-Only Items 1 through 14.

VOTE on Vote-Only Items 1 through 14:

Items Proposed for Discussion:

7100 Employment Development Department

The Employment Development Department (EDD) administers services to employers, employees, and job seekers. The EDD pays benefits to eligible workers who become unemployed or disabled, collects payroll taxes, administers the Paid Family Leave Program, and assists job seekers by providing employment and training programs under the federal Workforce Investment Act of 1998. In addition, the EDD collects and provides comprehensive labor market information concerning California's workforce.

The Governor's Budget begins by funding 9,039.4 positions (including 197.4 new positions) and budget expenditures of \$11.7 billion for the department, but then includes a 10-percent, across-the-board GF reduction (Budget-Balancing Reduction–BBR) of \$246,000 and 2.3 positions. The individual BBRs are as follows:

Program	General Fund*	Personnel Years (PYs)
Unemployment Insurance Appeals Board—Audit Appeals Reduction	-\$56	-0.5
Administrative Support Reduction	-\$190	-1.8
TOTALS	-\$246	-2.3

(*dollars in thousands)

Taking into account the proposed BBRs, the Governor's Budget would provide approximately \$421 million more in FY 2008-09 compared to adjusted-FY 2007-08 totals (occurring almost entirely in the Unemployment Compensation Disability Fund and the Unemployment Fund), and \$5.5 million less GF.

EDD Item 1: BCP-1—Automated Collection Enhancement System (ACES)

The EDD requests 18.0 positions and \$2.8 million (\$2.6 million GF) to fund year three of the ACES project. The ACES will provide an integrated and automated solution that will use state-of-the-art employer tax collection, storage, account management, and data retrieval technologies to maximize the effectiveness of the EDD tax collection operations as well as collect penalties and back-wages that are due to the Department of Industrial Relations (DIR).

Staff Comment: The ACES received initial funding of \$2.9 million in the Budget Act of 2006, and an additional \$2.8 million in the current year for procurement and contracting. Staff notes that the positions and funding the EDD requests are largely consistent with the plan reflected in last year's BCP; however, in order to speed up the project and generate additional revenues to the state sooner, the Administration has proposed provisional language (see Attachment A) to allow the EDD to go forward in fiscal year

(FY) 2008-09 with work that would otherwise have to wait six months for funding approval in the 2009-10 budget process. The language would authorize the DOF, upon 30-day notification of the Legislature and receipt of a new ACES Special Project Report, to increase the ACES appropriation. Additionally, the DOF would be required to report to the Legislature any positions administratively established for the EDD to perform ACES activities.

According to the EDD, this proposal would enable the ACES to generate \$40 million in additional revenue in FY 2009-10, compared to the \$20 million estimated in the original Feasibility Study Report. The ACES is expected to increase revenue collection by approximately \$71.4 million (with \$50 million benefiting GF) by the end of FY 2012-13, and each year thereafter. Staff notes that because the state is utilizing a benefits-based procurement strategy for the ACES, project costs (both for the vendor and ongoing) will be paid out of the additional revenue generated by the ACES. Based on the current Request for Proposal, the amount to be paid to the vendor would be capped at \$46 million. In other words, return on investment would start after paying both the ACES GF state costs and the GF vendor costs. The vendor would not receive full compensation if sufficient revenue levels are not met.

Staff Recommendation: APPROVE the request, including the accompanying provisional language.

VOTE:

EDD Item 2: BCP-2—Disability Insurance Automation (DIA) Project

The EDD requests one-time funding of \$1.1 million (Disability Insurance Fund) to support 6.6 positions previously approved for the DIA, a multi-year project. The resources would be used to continue the third year of procurement, development, and implementation of the DIA, which will provide greater access to services for claimants, medical providers, and employers by allowing them to submit disability claims electronically.

Staff Comment: The DIA project was initially approved in FY 2006-07 with \$1.8 million and 6.6 positions, and was provided \$1.4 million and 6.6 positions again in the current year to prepare and release a Request for Proposal for the system integrator (SI) vendor and begin the initial procurement activities for selection of that vendor. Staff notes that the 2007-08 proposal originally contemplated requiring 2008-09 project funding of \$10.9 million; however, it was determined after the 2007-08 proposal had been submitted that the SI vendor procurement process would require longer than the nine months scheduled in the original Feasibility Study Report (FSR). As a result, the project is approximately one year delayed and \$1 million over the original timeline and budget. According to the new timeline, the EDD plans to award and begin the SI contract in the latter part of FY 2008-09, with the majority of project costs to be incurred in 2009-10 (\$11.3 million) and 2010-11 (\$13.1 million) as the project solution is designed, developed, tested, and deployed.

As noted, the project savings have been diminished somewhat by costly delays; however, the EDD indicates that expected efficiencies from the project are

currently anticipated to result in a net estimated reduction of 48.6 PYs in SFY 2010-11. An additional net estimated reduction of 159.6 PYs and \$5.3 million savings are expected to be seen in SFY 2011-12. These estimates are included in the current Special Project Report (SPR) and are subject to change based upon the Prime Solution provided by the selected vendor that will be incorporated into a subsequent SPR.

Staff Recommendation: APPROVE the request.

VOTE:

EDD Item 3: BCP-3—Economic and Employment Enforcement Coalition (EEEC)

The EDD requests 25.0 two-year limited-term positions and \$2.5 million (\$1.25 million EDD Contingent Fund and \$1.25 million Unemployment Compensation Disability Fund) to continue the department's participation in the EEEEC. The EEEEC includes the Department of Industrial Relations (DIR), the Department of Consumer Affairs, and the United States Department of Labor, and was established to combat employment tax and labor law non-compliance within certain industries by conducting joint outreach and enforcement efforts.

Staff Comment: The EEEEC was established in FY 2005-06 to combat the "underground economy" which the Franchise Tax Board conservatively estimates results in losses of more than \$6.5 billion a year in statewide tax evasion. Within the underground economy, employers utilize various illegal schemes to conceal their true tax liability, as well as reduce their operating costs associated with insurance, payroll taxes, licenses, employee benefits, safety equipment, and safety conditions. The EEEEC conducts multi-agency sweeps within defined geographical areas and currently focuses on seven industries known to be participating in the underground economy, including agriculture, construction, car wash, garment, janitorial, restaurant, and racetracks. As of FY 2006-07, the EDD reported over 2,000 employer inspections conducted, resulting in identification of nearly \$110 million in unreported wages and over \$17.1 million in additional liability assessed. This additional liability reflects potential revenue to the GF; however, staff notes that the state must still collect on the liability and participants in the underground economy may seek to elude collection efforts.

According to the EDD, the participating agencies have learned a great deal from two full years of experience with the EEEEC. For example, efforts originally targeting horseracing tracks and the custodial industry proved to be ineffectual because of difficulty conducting surveillance. As a result, the EEEEC plans to better utilize its resources by targeting the palette manufacturing and repair industry and auto body shops. Additionally, the EDD has identified performance measures to evaluate EEEEC effectiveness and accomplishments (see Attachment B). According to the Administration, the EDD plans to incorporate these performance measures into future EEEEC reporting required in provisional language associated with this request.

The EDD was approved \$2.5 million and 25.0 three-year, limited-term positions in 2005-06 at the inception of the EEEEC and, if approved, this request would essentially renew the same funding and positions for an additional two years to continue the EDD's

participation in the program. Staff notes that the DIR and Contractors' State License Board (CSLB) also have requests to renew their respective EEEEC resources (Senate Budget Subcommittee 4 approved the CSLB request on March 24, 2008, and the DIR item is discussed below—see DIR Discussion Item #5).

Staff Recommendation: APPROVE the request, and acknowledge that, in so doing, the subcommittee expects the proposed performance measures to be included in future reporting on the EDD's EEEEC efforts.

VOTE:

EDD Item 4: Staff Issue—Workforce Investment Act (WIA) Discretionary Funds

The Governor's Budget proposes expenditure of approximately \$56.7 million in federal WIA discretionary funds within broad categories, including \$2.4 million for pre-apprenticeship Governor's pilot projects.

Staff Comment: In its *Analysis of the 2008-09 Budget Bill*, the LAO notes that, relative to the current year, the Governor reallocated WIA discretionary funds, opting to reduce funding in some areas, like parolee services, in order to provide funding in other areas, like the pre-apprenticeship Governor's pilot projects and regional collaboratives. The LAO recommends redirecting these resources back to parolee services because of the demonstrated value of the parolee employment programs in reducing recidivism for parolees, and because doing so would create an equivalent level of GF savings.

Staff notes that the subcommittee may wish to accept the LAO's recommendation to prioritize funding for programs with demonstrated benefits versus newer or less proven programs; however, due to the likelihood that the level of WIA funding provided by the federal government will change (relative to the amount currently budgeted), the subcommittee should wait to take action on this item until the final federal funding level is known.

Staff Recommendation: HOLD OPEN.

7350 Department of Industrial Relations

The objective of the Department of Industrial Relations (DIR) is to protect the workforce in California; improve working conditions; and advance opportunities for profitable employment. The DIR enforces workers' compensation insurance laws and adjudicates workers' compensation insurance claims; works to prevent industrial injuries and deaths; promulgates and enforces laws relating to wages, hours, and conditions of employment; promotes apprenticeship and other on-the-job training; assists in negotiations with parties in dispute when a work stoppage is threatened; and analyzes and disseminates statistics which measure the condition of labor in the state.

The Governor's Budget begins by funding 2,880.7 positions (including 36.3 new positions) and budget expenditures of \$393.1 million for the department, but then includes a 10 percent, across-the-board General Fund (GF) reduction (Budget-Balancing Reduction–BBR) of \$1.3 million and 9.4 positions. The individual BBRs are as follows:

Program	General Fund*	Personnel Years (PYs)
Self-Insurance Plans—Operating Expenses & Equipment Reduction	-\$4	--
Mediation/Conciliation Reduction	-\$221	-1.8
Division of Occupational Safety & Health—Board Reductions	-\$222	-1.8
Division of Labor Statistics & Research—Transfer Publication of Apprenticeship Prevailing Wage Determinations	-\$294	-2.9
Administrative Support Reduction	-\$553	-2.9
TOTALS	-\$1,294	-9.4

(*dollars in thousands)

Taking into account the proposed BBRs, the Governor's Budget would provide approximately \$6.8 million more in FY 2008-09 compared to adjusted-FY 2007-08 totals, including \$549,000 less GF.

DIR Item 1: BBR—Reduce State Mediation and Conciliation Services

The Governor proposes a 10-percent GF reduction of \$221,000 and 2.0 positions to the State Mediation and Conciliation Service (SMCS) which was established to improve employer-union relations by mediating labor disputes free of charge.

Staff Comment: According to the DIR, a decrease in the number of mediators (from 13 to 11) would result in an increase in the number and duration of public sector strikes in the state. For example, in the last year alone the SMCS has been involved in helping to

avert strikes in transit (San Bernardino and Contra Costa bus companies) and schools (San Francisco and others), and has helped broker deals to end strikes (for example, Hayward schools, Mendocino county deputy District Attorneys, and Hartnell College faculty). Fewer mediators spread out over the same number of disputes could result in more unresolved disputes and ultimately result in more or longer work stoppages.

Although the Administration has not identified an explicit cost associated with this proposal, staff notes that work stoppages, such as public transit strikes that prevent or delay employees from arriving at work, can have adverse effects on the state economy. Additionally, the state cannot collect Personal Income Tax from workers who are not receiving a paycheck. Notwithstanding these potential (and somewhat speculative) costs, the subcommittee may still wish to approve this reduction if it believes that the savings could be used to avoid more certain and/or greater costs in another program area.

Staff Recommendation: APPROVE the reduction.

VOTE:

DIR Item 2: BBR—Reduce Division of Occupational Safety and Health Staff

The Governor proposes a 10-percent GF reduction of 2.0 positions and \$222,000 to the EDD's Division of Occupational Safety and Health (DOSH). The reduction would result in: (1) the elimination of 1.0 Hearing Officer position at the Occupational Safety and Health Appeals Board (OSHAB), whose responsibility it is to handle appeals from private and public-sector employers regarding citations issued by the DOSH for alleged violation of workplace safety and health laws; and (2) the elimination of 1.0 Staff Services Manager (SSM I) position at the Occupational Safety and Health Standards Board (OSHSB), whose responsibility it is to ensure a safe and healthful workplace for California workers by promoting, adopting, and maintaining reasonable and enforceable standards, as well as by granting or denying applications for variances from adopted standards and responding to petitions for new or revised standards.

Staff Comment: The DIR indicates the reduction to the OSHAB would result in over 1,000 fewer appeals heard by the board (there are currently 3,000 cases backlogged) and would increase the potential of federal complaint filing due to failure to process cases in a timely manner. According to the DIR, a federal complaint (alleging, for example, that the state takes 16 months to process appeals compared to the Federal OSHA standard of 10 months) could result in the state losing the right to implement its own OSHA plan and in being required to institute the federal program instead.

Staff additionally notes that each appeal represents an alleged violation and a potential amount due and payable to the GF—the current backlog is estimated at approximately \$1.9 million. Thus, this reduction would further delay penalty collections due to the GF.

The DIR indicates that the reduction to the OSHSB would result in delays in the rule-making process and the board's ability to respond to petitioners and applicants.

Staff Recommendation: APPROVE the reduction.

VOTE:

**DIR Item 3: BCP-1—California Occupational Safety and Health Act
(Cal/OSHA) Program Fund Shift (Including TBL)**

The DIR requests to establish, through trailer bill language (TBL) a new Occupational Safety and Health Fund (OSHF) to be supported by a new assessment on Workers' Compensation premiums. The initial assessment for FY 2008-09 would be \$18.9 million, and would (1) create \$9.6 million in savings to the Targeted Inspection & Consultation Fund (TICF) by shifting expenses to the newly created OSHF; (2) provide funding of \$3.9 million to fund current Cal/OSHA shortages; and (3) provide approximately \$5.4 million for an initial fund balance and support negotiated salary increases for public safety staff.

Staff Comment: The Governor's Budget proposes total expenditures of \$104.1 million for Cal/OSHA, with approximately 25 percent provided from the GF, 25 percent from federal funds, and the remainder consisting of various special funds.

Among the special funds supporting Cal/OSHA, existing labor code provides for the establishment and maintenance of four separate funds that are repositories for assessments made on employers' workers' compensation premiums (in the case of employers who are not self-insured) and on total indemnity (in the case of employers who are self-insurers). These funds, including the TICF, support various DIR activities related to workers' compensation and occupational safety and health. This proposal would add a fifth assessment that would also support mandated activities of the Cal/OSHA program.

According to the DIR, the TICF has served since the mid-1990s as the Cal/OSHA program's only cushion against swings in funding from the GF and inflationary costs. Since approximately 2002, when a statewide fiscal crisis triggered GF reductions in Cal/OSHA, the TICF has been relied upon to meet mission critical requirements and the program has gradually exhausted a surplus that existed previously in the fund. While federal funds have remained stagnant over the last three fiscal years, program costs have increased, and last year the DIR submitted a request in the May Revise for a \$13 million loan to the TICF from the Workers' Compensation Administration Revolving Fund (another of the four funds currently supported by workers' compensation premium assessments) so that program services would not have to be reduced.

The DIR indicates that the TICF has no remaining capacity to backfill any loss in funding or unfunded increases. Therefore, the Administration has proposed TBL to institute a new assessment to support a new fund, the OSHF, which would: (1) replace the TICF in support of the Cal/OSHA program (approximately \$9.6 million annually); (2) offset current and/or anticipated funding shortfalls (approximately \$3.9 million annually, primarily related to past General Salary Increases) that have not been covered by flat federal funding over the past several years; (3) fund the estimated cost of a FY 2008-09 General Salary Increase (approximately \$1.5 million); and (4) provide an initial fund balance of approximately \$3.8 million (as a reserve for economic uncertainties). According to the DIR, the new assessment would result in an approximate 10-percent

increase to the total average annual assessment for employers. For example, the DIR estimates that the FY 2006-07 assessment was \$7.01 per \$1,000 of premium, and this proposal would increase that amount by \$0.69 to \$7.70 per \$1,000 of premium.

Staff Recommendation: APPROVE the request and the accompanying TBL.

VOTE:

DIR Item 4: BCP-19—Targeted Inspection & Consultation Fee Restructuring to Fund Loan Repayment (Including TBL)

The DIR requests authorization to revise the TICF fee structure to increase revenue by approximately \$3.9 million annually. The increased revenue would be used to repay a \$13 million loan from the WCARF over a six-year period.

Staff Comment: This request is related to DIR Discussion Item #3 (above), and would increase assessments on employers' workers' compensation premiums to pay back the aforementioned loans taken out in FY 2007-08. Specifically, the proposed TBL would increase the maximum assessment from \$2,500 (currently levied only on employers with a payroll of more than \$3.5 million) to \$10,000 for employers with payrolls of more than \$20 million. Staff notes that the TBL would set various assessment amounts (ranging between \$2,500 and \$10,000) for employer payroll above \$3.5 million and below \$20 million.

Staff Recommendation: APPROVE the request and the accompanying TBL.

VOTE:

DIR Item 5: BCP-2—Economic and Employment Enforcement Coalition (EEEEC)
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The DIR requests 29.0 two-year limited-term positions, 1.0 two-year limited-term position for the LWDA, and \$3.5 million (various special funds) to continue the department's participation in the EEEEC. The EEEEC includes the EDD, the Department of Consumer Affairs, and the United States Department of Labor, and was established to combat employment tax and labor law non-compliance within certain industries by conducting joint outreach and enforcement efforts.

Staff Comment: This proposal is consistent with the EDD proposal described above (see EDD Discussion Item #3), in that the Administration has requested renewal of all existing limited-term positions associated with DIR EEEEC efforts. However, this request also includes a new position to be located at the LWDA that would coordinate, direct, and provide consistency across all EEEEC efforts. Staff notes that to the extent that EEEEC activities have been initiated and organized at the ground level, the ability to coordinate activities across departments and collect uniform data on outcomes has been limited or, at best, hamstrung. The proposed LWDA position would presumably better enable the EEEEC to collect uniform data which could then be used to better target its activities where they can have the greatest effect.

Although the benefits of the EEEEC are not strictly monetary (because mere enforcement serves as a deterrent to other would-be lawbreakers), according to the DIR, its EEEEC efforts resulted in approximately \$26.4 million in citation assessments, projected penalties, and payroll tax liabilities in FY 2006-07, with the GF-portion of these dollars estimated at approximately \$9.9 million. These figures were up from \$12.7 million and \$3.0 million, respectively, in FY 2005-06.

Staff notes that the DIR has identified additional performance measures for tracking future EEEEC activities, including:

- Conducting outreach surveys to validate interest level in, and effectiveness of, each of the various types of outreach.
- Instituting a quarterly follow-up inspection program based upon randomly selected samples of employers EEEEC has cited in sweeps during the prior two quarters.
- Tracking the effectiveness of enhanced collection efforts such as license withholding.

As with the EDD, the subcommittee may wish to request the DIR to verbally commit to incorporating these performance measures into the EEEEC reporting already required in the provisional language.

Staff Recommendation: APPROVE the request, and acknowledge that, in so doing, the subcommittee expects the proposed performance measures to be included in future reporting on the DIR's EEEEC efforts.

VOTE:

DIR Item 6: BCP-8—Security Upgrades for District Offices

The DIR requests one-time augmentations of \$386,000 (Workers' Compensation Administration Revolving Fund—WCARF) in FY 2008-09 and \$557,000 (WCARF) in FY 2009-10 to support the installation of safety-related components to improve and make more consistent the security standard for the Division of Workers' Compensation's (DWC) 24 district offices.

Staff Comment: The DIR has worked with the California Highway Patrol (CHP) to obtain security assessments on district offices in light of several events involving breaches of security in DWC facilities. To date, the CHP has assessed 10 of 24 buildings and this request reflects the CHP recommendations the DIR deemed minimally necessary to protect staff, including panic buttons, alarm systems, key card systems, and installation of tempered glass. According to the DIR, some of the CHP recommendations were directed at the building as a whole, and included capital improvements which are not within the department's authority to implement as some of the leased facilities. Additionally, the CHP called for bullet proof/ballistic glass, magnetometers, and video surveillance cameras which the DIR opted not to implement.

Given that the CHP was hired to conduct the building assessments because of its security expertise, the subcommittee may wish to question the DIR as to the department's rationale for opting to follow some CHP recommendations but not others. While staff acknowledges that the CHP may have prescribed certain measures that were cost prohibitive and that the DIR may have felt the need to prioritize certain security measures over others, the safety of state worker's is a prime concern and the Legislature will want to feel assured that the proposed security upgrades do not, in a manner of speaking, padlock the front door while inadvertently leaving the back door wide open.

Staff Recommendation: HOLD OPEN.

VOTE:

DIR Item 7: BCP-9—Redirect Rehabilitation Unit Personnel to New Return-to-Work Unit with TBL

The DIR requests redirection and reclassification of 22.0 existing positions within its current Rehabilitation Unit to the newly-created Return-to-Work Unit in order to support the administrative workload associated with Chapter 6, Statutes of 2002 (AB 749) relative to Return-to-Work (RTW) and Chapter 34, Statutes of 2004 (SB 899) regarding the Supplemental Job Displacement Benefit. The DIR also proposes trailer bill language (TBL) to extend the sunset on the RTW.

Staff Comment: AB 749 established, until January 1, 2009, a RTW program consisting of reimbursement to employers for wages of certain injured workers who were returned to work, as well as a supplemental job displacement benefit designed to enhance and reinforce the workers' compensation reform goal of promoting RTW programs. Subsequent legislation required the DIR to contract with an independent research organization to conduct a study and issue a report on the RTW program by January 1, 2008. Staff notes that, according to the DIR, this report is still unfinished and will likely not be made available to the Legislature before the close of the budget subcommittees (more than five months late). Because the report is not available and the Legislature is therefore unable to evaluate the justification for continuing the RTW program on a permanent basis, the DIR has proposed a one-year program extension so that the Legislature may weigh the program merits in next year's budget process.

Consistent with the workers' compensation reform shift to a RTW model, SB 899 abolished the vocational rehabilitation benefit in workers' compensation effective January 1, 2009. As this function is phased out, the DIR is requesting that associated staff be redirected and reclassified to work on the RTW and supplemental job displacement benefit programs.

Staff Recommendation: HOLD OPEN pending the aforementioned report.

DIR Item 8: BCP-12—Statewide Facilities—Additional Space for District Offices

The DIR requests \$875,000 (WCARF) in FY 2008-09 and approximately \$1.5 million and \$1.7 million in FYs 2009-10 and 2010-11, respectively, to support costs associated with additional space in the Los Angeles, Riverside, and Santa Ana district offices, the relocation of the Grover Beach district office as well as adjustments to the Statewide Facilities schedule.

Staff Comment: According to the DIR, the requested funding is necessary because the DIR has received multiple new positions over the past several years associated with workers' compensation reform, but standard complement of Operating Expense and Equipment funding for new staff has proven insufficient to meet the facilities needs at the district offices where those staff have been located. For example, the DIR cites the need to fund: (1) additional hearing rooms and cubicles; (2) reconfiguration and addition of space; and (3) increases in leased-space costs and one-time costs for moves.

While staff acknowledges that additional positions often spur the need and/or desire for the facilities changes noted above, given the current fiscal crisis, the department must demonstrate a strong connection to health and safety or an offsetting savings/cost avoidance/revenue associated with the request before the subcommittee will give it further consideration. To date, the DIR has provided insufficient information to justify all of the elements of this request according to these criteria. Staff notes that certain components of the proposal may warrant additional consideration on an individual basis because they would avoid greater costs (for example, relocating an office to less expensive leased space), or address real health and safety concerns (if, for example, staff are currently provided insufficient work space in violation of existing laws or regulations). However, the subcommittee may wish to deny the request at this time and offer the DIR reconsideration on any components for which it wishes to submit additional information.

Staff Recommendation: DENY the request, and offer the DIR reconsideration in the future should it choose to bring forward additional information addressing the criteria cited above.

VOTE:

DIR Item 9: BCP-13—Relocate DIR's San Francisco Headquarters

The DIR requests \$432,000 (including \$130,000 GF) in FY 2008-09, \$3.6 million (including \$1.1 million GF) in FY 2009-10, and \$6.9 million (including \$2.1 million GF) ongoing to fund the relocation of the DIR headquarters office and two District Offices to allow for the expansion of the Administrative Office of the Courts (AOC) and the Department of Justice (DOJ) within the Hiram Johnson State Building located in San Francisco.

Staff Comment: According to the LAO, neither the AOC nor DOJ has provided a plan justifying the need for the proposed move, and, therefore, this request is premature.

Staff notes that the proposed move is intended to provide additional space to the AOC and DOJ as well as the DIR. However, given current fiscal constraints, it is unclear whether any of these agencies will need additional space in the immediate future.

Staff Recommendation: DENY the request.

VOTE:

DIR Item 10: Staff Issue—Electronic Adjudication Management Systems (EAMS)

The EAMS is a computer-based, workers' compensation case management project currently under development by the DIR and intended to convert the Workers' Compensation Appeals Board (WCAB) to paperless processes. The stated goal of the EAMS project is to eliminate redundancy, create efficiency and make the workers' compensation case management system more accessible to users, while preserving confidentiality. Staff notes, however, that concerns have been raised by stakeholders in the workers' compensation arena regarding the EAMS design and implementation plan.

Funding in the amount of \$20.1 million was originally approved for a workers' compensation case management system (later known as the EAMS) in the Budget Act of 2004. Consistent with broader efforts being made at the time to reform the workers' compensation system, the original request was made as part of the Governor's May Revision to the budget, and provisional language was included to make the appropriation contingent upon submittal and approval of a Feasibility Study Report (FSR) by the Department of Finance. The approved FSR projected costs of \$24 million spanning five years; however, subsequent delays required reappropriation of approximately \$8.8 million in FY 2006-07 and an updated project report put the revised project cost at \$36 million (as of October 2006). According to the DIR, the 50-percent increase in project costs were the result of unforeseen delays that occurred in the contract solicitation process and a higher-than-expected project bid.

The EAMS development and build phase is currently scheduled to be completed by the summer of 2008, followed by a pilot test of the system at all Division of Workers' Compensation district offices before the EAMS goes "live" for all users (including injured workers, law firms, insurance carriers, and healthcare providers) sometime late in 2008.

Based on input received by staff, EAMS stakeholders harbor several major concerns about the project, including the following:

- The EAMS roll-out plan is unclear. For example, the DIR has indicated that, in the summer of 2008 during the lead-up to "go live," WCAB district offices may close (or at a minimum cease functioning normally) for days at a time while staff are trained to use the new system. One WCAB "Notice to Community," dated February 27, 2008, states that "efforts are underway to have staff to keep our office open during training days." Staff notes that stakeholders have expressed concern that, given the equivocation in the message related above, it is unclear that the DIR's plan would adequately safeguard the constitutional right of injured workers to an expeditious hearing.

- The contract for the EAMS system calls for the state to receive just 2,500 licenses—the number of users who can use the system at any given time—and the WCAB has reserved 1,200 of these licenses for internal use. This leaves only 1,300 for all of the attorneys, applicants, claims professionals, lien claimants, and others who have a vested interest in the 650,000 claims filed and the 300,000 hearings held each year. In the view of the stakeholders, this shortage of licenses represents a very real barrier to access with serious legal and monetary ramifications.

Attachment C is a set of questions submitted by Assemblymember Juan Arambula to Keven Star, court administrator of the Division of Workers' Compensation to try and gain clarification on the issues of concern to the EAMS stakeholders. Staff notes that the Assembly Insurance Committee is set to hold an informational hearing on April 9, 2008, entitled: *"THE DIVISION OF WORKERS COMPENSATIONS ELECTRONIC ADJUDICATION MANAGEMENT SYSTEM (EAMS): IS THE SYSTEM READY AND DOES IT SERVE ITS USERS?"*

The subcommittee may want the DIR to clarify the current status of the EAMS, but may wish to await developments in the Assembly's informational hearing before taking any further action on this item. Staff recommends that the Chair request the DIR to provide the subcommittee with a copy of the department's responses to the questions in Attachment C.

Attachment A—ACES Provisional Language

7100-001-0001--For support of Employment Development Department, for payment to
Item 7100-001-0870..... 25,664,000

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Provisions:

1. (a) Of the funds appropriated in this item, \$2,559,000 is to support the development of the Automated Collection Enhancement System (ACES). These funds may not be used for any other purpose or for items outside the approved project scope. Changes in the project scope must receive approval using the established administrative and legislative reporting requirements.

7100-001-0185

Provisions:

4. Of the funds appropriated in this item, \$6,000 is to support the development of the Automated Collection Enhancement System (ACES). These funds may not be used for any other purpose or for items outside the approved project scope. Changes in the project scope must receive approval using the established administrative and legislative reporting requirements.

7100-001-0514

Provisions:

3. Of the funds appropriated in this item, \$6,000 is to support the development of the Automated Collection Enhancement System (ACES). These funds may not be used for any other purpose or for items outside the approved project scope. Changes in the project scope must receive approval using the established administrative and legislative reporting requirements.

7100-001-0588

Provisions:

2. Of the funds appropriated in this item, \$239,000 is to support the development of the Automated Collection Enhancement System (ACES). These funds may not be used for any other purpose or for items outside the approved project scope. Changes in the project scope must receive approval using the established administrative and legislative reporting requirements.

Attachment B—EDD Performance Measures to Evaluate the EEEEC

Develop an Outreach Survey

Develop a survey for each of the three types (Industry Specific, Post Inspection Meeting, and Employee Outreach) of EEEEC outreach events to determine if the information being provided to the attendees is of value to them. These surveys would score for each of the categories and the scores tracked.

Number of attendees coming to Outreach events

Report the number of individuals attending outreach events. This measurement would demonstrate the effectiveness of the EEEEC outreach marketing efforts and need for such events in a given geographical area.

Conduct random re-inspections of businesses within all EEEEC industries

Conduct random re-inspections of businesses to determine the effectiveness of the EEEEC program. This method would not only benefit EDD but all partnered agencies in evaluating their enforcement processes and to ensure employers remain in compliance.

Increase in Tax Assessments related to targeted business

Report the assessed liabilities as a result of audit referrals made by the Department's EEEEC Agents. Assessed liabilities are a good measurement for a tax program and it is suggested that this performance measure be included.

Increase in employees reported to EDD as a result of an EEEEC Payroll Tax Audit

Report the number of previously unreported employees found during an audit of an EEEEC audit referral. This is a good measurement as it indicates that EEEEC is targeting the most egregious violators for inspection.

Increase in employees reported to EDD within all of the EEEEC focused industries

Develop a method of tracking the number of reported employees within all of the EEEEC focused industries. This measurement may indicate whether EEEEC visibility in the field and publicity has a wide ranging effect on the industry as a whole. Tax Branch would need to seek additional assistance within EDD to provide global data by industry.

Number of New Employer Registrations as a result of an EEEEC on-site inspections

During the on-site inspections when EEEEC staff identify a non-registered employer they inform the employer that he/she is in fact a subject employer and that their workers are subject employees. Staff then assist the employer in completing a DE-1 Registration Form and provide them with the necessary tax publications and reporting forms.

Number of New Employer Registrations within all of the EEEEC seven industries

Develop a method of tracking the number of new employer registrations within all of the EEEEC focus industries. This measurement may indicate whether EEEEC visibility in the field and publicity has a wide ranging effect on the industry as a whole. Tax Branch would need to seek the assistance of the Department's Labor Market Information Division (LMID), who might be able to provide global data by industry.

Attachment C—Letter from Assemblymember Juan Arambula to Keven Star, Court Administrator, Department of Industrial Relations, Division of Workers' Compensation

March 19, 2008

Mr. Kevan Star, Court Administrator
Department of Industrial Relations
Division of Workers' Compensation
1515 Clay Street, 17th Floor
Oakland, CA. 94612-1402

Dear Mr. Star:

It has come to my attention that the Department of Industrial Relations (DIR), Division of Workers' Compensation (DWC), is in the midst of developing an Electronic Adjudication Management System (EAMS). Further, the Department plans to begin training DWC employees on the use of the new system this Summer, and to allow external access to the system around November of this year.

As Chairman of Assembly Budget Subcommittee-4 on State Administration, which has jurisdiction of DIR's budget, I am concerned about funding implications associated with this automated system, in terms of both the sufficiency of financial resources needed to implement EAMS and permit full access by all parties to the Workers' Compensation system, as well as maintaining an effective adjudicatory process during EAMS' rollout period.

Last week I asked my Budget Consultant, Mr. Les Spahnn to meet with your staff and other interests to ascertain whether there are potential problems to the effective and efficient implementation of EAMS. Based on his discussions with your staff and others, Mr. Spahnn has reported to me that the potential for problems exist, and should be explored further by my Subcommittee.

It is my intention to review the status of the EAMS project when DIR's budget is taken up by my Subcommittee on April 8th. In order to have a thorough discussion at the hearing, I am requesting that you provide to me, in writing, answers to the questions listed below, by April 1st. It is my intent to identify and explore whether there may be any problems to system implementation on the horizon, and determine how they may be addressed, and the resources that are needed to ensure that those problems do not come to fruition.

Please answer the following questions:

1. Explain in detail your time line for fully implementing EAMS, including access by all potential external users, the rationale for the time line, the current status of implementation and any impediments encountered, your contingency plans for addressing future delays, and complications relating to full implementation of EAMS, including the period during which external access will be limited..
 - A. Did you consult with other court systems that used the same vendor to see what problems or system limitations they experienced or what successes they had, either before deciding on a vendor or during the design and implementation period? If not, why not?
 - B. When is the Go Live Date for external users? When can they use the system fully as it was designed and advertised to operate? When will all the users who need a license receive a license and what is the process to decide the priority of receiving a license to use the system?
 - C. What is the process for requesting a license to use EAMS and the process for deciding who receives a license and when?
2. Explain with specificity, the nature, extent, and need for closing down local board offices during training, and your plan for preventing delays in proceedings and other activities at the local boards related to delivering benefits, including medical benefits, expeditiously to injured workers.
 - A. How many judges will be taken out of each board and for how long to obtain the “training judges.” How long will these judges be off the trial calendar and what provisions are being made to ensure that the cases that are set for trial or hearing are actually heard on the date set? What assurance that all cases which have statutory priority are heard on the date given, including cases for Expedited Hearing, out of town witnesses and trials that are continued after testimony is already taken and need additional days to complete the trial?
 - B. What procedures will be in place to ensure that the Constitutional and statutory deadlines for trials and hearings will be met during the “training” period and implementation period for EAMS?
 - C. What provisions for Information and Assistance Officers are being made to assure equal access and time lines for unrepresented workers?
 - D. What, if any, reduction or statutory changes in the authority of Workers’ Compensation Judges, including their ability to render final decisions and review of their opinions is being required under the EAMS system.
3. Explain with specificity how previously appropriated funds have been expended, what additional funding is – or may be – required for what purposes, the steps you

have taken to obtain – and the current status of – additional funding, and your contingency plan if additional funding is not forthcoming.

A. What staffing needs are required so that the scanning of all the documents received after the internal “GO LIVE” date in August 2008 are entered timely into the system and are available at the time of hearing or other matter as required? What provisions do you have to ensure that documents electronically filed (or which are in system electronically) are correctly named and can be retrieved without extraordinary searches? Or that the data on the forms is correctly picked up by the Optical Character Reader (OCR) as they are being scanned?

B. What provisions are being made so that old documents are accepted for filing and requests for hearing and other matters are not rejected or set aside due to the fact someone did not know of the new documents and/or could not access them?

C. What provisions are being made to integrate open, ongoing paper files that also have electronic requirements after the “Go Live Date?”

Your prompt attention to this request is most appreciated. If you have any questions, please contact Mr. Les Spahnn on my staff at 916-319-2031 or by e-mail at Leslie.Spahnn@asm.ca.gov.

Respectfully

JUAN ARAMBULA

Chairman, Assembly Budget Subcommittee on State Administration

Cc. The Honorable John Laird; Chairman, Assembly Committee on Budget
The Honorable Joe Coto; Chairman, Assembly Committee on Insurance
Chris Wood; Chief Consultant, Assembly Committee on Budget
Mark Rakich; Chief Consultant, Assembly Committee on Insurance
Mr. John Duncan; Director, Department of Industrial Relations
Ms. Carrie Nevans; Administrative Director, Division of Workers' Compensation.
Mr. Joseph Miller; Chairman, Workers' Compensation Appeals Board